PRESIDENT BACK AND BUSY.

FIRST HE SUMMONS LEADERS TO CONSIDER THE MESSAGE,

Also to Decide What Ought to Be Done and What Can Be Done During the Coming Short Session of Congress Recommendations Regarding Trusts -Doesn't Desire Any Tariff Legislation.

WASHINGTON, Nov. 21.-President Roosewelt had a busy day after arriving in Wash ington at 8 o'clock this morning from his fruitless chase for bears in the cane brakes of Mississippi and he will have a still busier day to-morrow. At 8:30 in the morning he will start on a special train for Philadelphia, accompanied by members of the Cabinet and a few other friends and after attending various functions there and making two or three speeches, the las one a formal address at the Union League banquet in celebration of the anniversary of Founder's day, he will return to the White House on a train leaving the Quaker City at 4 o'clock Sunday morning. This afternoon the President found time for horseback ride with Senator Lodge.

President Roosevelt desires to talk with some Republican leaders in the Senate and House before putting the finishing toucher to his message and to that end he sent telegrams to-day to a dozen or more Senators and Representatives, asking them to meet him at the White House on Monday morning. Among those invited is "Uncle Joe Cannon, chairman of the Committee on Appropriations, who, if he lives, will be Speaker of the Fifty-eighth Congress. To these gentlemen the President will read the important parts of his message as he did to the members of his Cabinet to-day, and there will then be a conference as to what ought to be done, what might be done and what can be done, during the three short months that Congress will be in session. The President hopes to send the message to the printer not later than Tues-

s to what the message contains, that is of course, mere guesswork, based on what the President said last year and on a knowl-edge of his views on important questions of the hour which, with his characteristic freedom and frankness, he expresses to everybody with whom he talks in confi-

dence.
His recommendations this year will His recommendations this year will comprise a renewal of those at the opening of last session, for legislation enabling the executive departments to find out what the so-called trusts are doing, so that they can be punished if it is found that they are vicinting the laws and, perhaps, with somewhat specific suggestions as to how the Sherman Anti-Trust law can be amended on the lines laid down in the recent Pittsburg speech of Attorney-General Knox, wherein he pointed out that this eral Knox, wherein he pointed out that this law, with certain modifications, can be made to fit the case that is now giving so much concern to the Administration, without resorting to the impracticable scheme of an amendment to the Federal Con-

The only member of Congress who has yet come to the front as the self-confessed author of amendments designed to suffi-clently strengthen the Sherman law, since the fiction that the Hon. Charles E. Little-field of Maine had been deputized to draw neid of Maine had been deputized to draw up the Administration measure was ex-ploded, is Senator Cullom, chairman of the Committee on Foreign Relations and a member of the committee on Interstate Commerce, of which he was formerly chair-man. It is a fact, however, that the offi-cials of the Department of Justice have cials of the Department of Justice have been overhauling the Sherman law, and if it is found that there is any serious attempt on the part of Congress to legislate on this subject, a matter which at present is very much in doubt, to say the least, they will have a bill ready for consideration by the Judiciary Committee.

It can be set down as a fact that the President does not hope to see any tariff legisla-

dent does not hope to see any tariff legisla-tion at the coming short session of the Congress and does not expect any. He will in his message recommend the ap-pointment of a permanent tariff commis-sion to go over the schedules of the present law and suggest to Congress changes from time to time that may be thought necessary by altered industrial conditions, but it is the opinion of those who have control of the opinion of those who have control of such matters in Congress that even such a law as this will not be passed at the coming session. The tariff question will be discussed more or less, but it is thought that if any definite action is taken it will be in the line of granting authority to the committees of Congress to look into the subject during the long summer recess and prepare for any tariff revision that may be decided upon at the regular session of

prepare for any tariff revision that may be decided upon at the regular session of the Fifty-eighth Congress that meets in December, 1903.

At the White House conference next Monday it is hoped that it can be ascertained by an interchange of views what the legislative programme for the three months session will be. It is the general opinion among the influential leaders in both houses that liftle legislation will be enacted beyond the passage of the appropriation bills and such other measures coming over from last session as it was generally understood should be disposed of before the 4th of March. The President agrees with his friends in Congress that if no new questions of importance are to be brought forward for discussion or action it will be just as well to let the country know it at the start.

brought forward for discussion or action it will be just as well to let the country know it at the start.

The question of Cuban reciprocity will, by general consent, be placed upon the working calendar, but just what will be done with it and when depends very largely upon the action of the Cuban Government with regard to the reciprocity treaty between the United States and Cuba that is now in course of negotiation, but which now in course of negotiation, but which President Palma's Cabinet do not seem disposed to put into the shape desired by the United States.

by the United States.

As for the reciprocity treaties with other countries, now pending in the Senate, there is every reason to believe that when the gavels fall on the 4th of March they will be found just where they are to-day—on the unfinished calendar. A concerted effort will be made to pass the Statehood bills and perhaps the bills which have already passed the Senate providing for a subsidy to American ships and creating a Department of Commerce. Whether the Ship Subsidy bill will be taken up, discussed and passed, is one of the matters that may be decided upon at the conference that may be decided upon at the conference next Monday.

The President Brings Home a Bear and Deer WASHINGTON, Nov. 21.-President Roosevelt brought with him from Mississippia bear and deer. The animals have been skinned and the pelts will be used for rugs

the bear skin especially being well suited to that purpose. The President was in

fine spirits this morning, telling visitors at his office that he had a mighty fine time despite his poor luck as a sportsman.

GENERAL STAFF FOR THE ARMY Secretary Root Will Again Urge Congress to Provide for It.

WASHINGTON, Nov. 21.-Secretary Root expects to secure but little military legislation from the coming session of Congress A simple general staff bill will be practically the only legislation he will ask for in connection with the army reorganization, and the opponents of the consolidation scheme, by which Secretary Root hoped last year to unite the Quartermaster's, Subsistence and Pay departments into one Department of Supply, will be surprised to learn that the Secretary of War has determined temporarily to abandon this plan, and wil not ask Congress for legislation along that

THE PRESIDENT'S FLAG. Dispute Between the Navy and War De-

partments as to Design Is Settled. WASHINGTON, Nov. 21. - Official announce ment was made to-day that the question of the design of the President's flag, which arose between the Navy and War departments, has been settled. An order de scribing the flag was issued by the Secretary of the Navy and a similar order will

be issued by the Secretary of War. The question at issue between the two departments was whether the shield on the flag should contain seven red and six white bars or seven white and six red bars. The new design is based on the cer shield of the great seal of the United States which is the central figure of the President's ensign, should contain seven white and six red bars, and the order issued to-day directs that this design be followed.

INDIANS ANXIOUS TO WORK. 2.000 Dropped From the Ration Roll

Since the New Policy Was Established. WASHINGTON, Nov. 21 .- According to the report of the Commissioner of Indian Affairs, made public to-day, over 12,000 Indians have been dropped from the Government ration roll as a result of the policy of the Department in encouraging the Indians to work and in cutting off the regular allow-ance formerly issued to able-bodied mem-

ance formerly issued to able-bodied mem-bers of the various tribes. Commissioner Jones gives an explanation of his famous "short hair" order and dis-claims any desire on the part of the office to force the Indians to cut their flowing locks and wash the paint off their faces. The Department would like to see these things happen, however, and hopes to ac complish them by moral sussion.

John R. McLean's Automobile Burned.

WASHINGTON, Nov. 21 .- A shapeless mass of twisted steel tubing is all that is left of John R. McLean's electric automobile, which overturned in a mudhole near the School last night and afterward t fire. Mr. Arthur MacArthur Washcaught fire. Mr. Arthur MacArthur Wash-burn of Ohio was in the machine at the time of the accident and had a narrow escape. After extricating himself he tried to right the machine and then discovered that it was on fire. The entire body was con-sumed and the steel framework bent and warped.

North Atlantic Squadron Arrives at San Juan.

WASHINGTON, Nov. 21.-The North Atlantic Squadron, consisting of the battleships Kearsarge, flagship of Rear Admiral Higginson; Alabama, Massachusetts and Indiana, the cruiser Cincinnati and the gunboat Machias, arrived at San Juan, P. R., this morning, six days out from Hampton Roads. Hampton Roads.

Army and Navy Orders.

WASHINGTON, Nov. 21 .- These army orders were Issued to day:

First Lieut. Edward P. Rockhill, assistant surgeon, detailed as a member of the examining board at the Presidio of San Francisco vice Capt. John S. Kuip, assistant surgeon, relieved.

Second Lieut. Staley A. Campbell, Eighteenth Infantry, transferred to Seventeenth Infantry. Cadet Wesley W. Price, fourth class. United

Company L.
Cadet Wesley W. Price, fourth class. United States Military Academy, honorably discharged by reason of physical disability incurred in the line of duty.

Major Isaac W. Littell, Quartermaster, to additional duties, temporarily in charge of the general depot of the Quartermaster's Department at New York city.

Leaves of absence granted: Capt. John C. Waterman, Seventh Cavalty, extended two months; Major William H. Baidwin, Commissary, extended one month; Capt. Robert W. Dowdy, Twenty-second Infantry, extended two months. Contract Surgeon William C. Mabry, for six days: First Lieut. Carrison Ball, artillery, for five days; Major Edward E. Hardin, Seventh infantry, for two months; Second Lieut. Edward N. Johnston, engineer, for seven days; Capt. James A. Shipon, artillery, for one month; Second Lieut. Archibald F. Commissey, Seventh Cavalry, for fourteen days; Capt. Richard C. Croxton, Twenty-third Infantry, for ten days; Capt. Philip R. Ward, artillery, extended one month; Capt. John C. W. Brooks, Artillery, further extended fourteen days; Contract Surgeon George L. Cable, extended one month; Capt. William R. Dashiel, Twenty-fourth Infantry, for five days.

These navy orders were issued: These navy orders were issued:

Commander F. H. Delano, from League Island
Navy Yard to navy yard, Portsmouth, N. H., as
ordnance officer.

Passed Assistant Surgeon W. H. Bucher, sick
leave extended one month.

Changes in Aslatic station: Commander U. R.
Harris, relieved as Governor of Subig; Ensign
C. S. Freeman, from command of Urdaneta to the
Rainbow, staff of Rear Admiral Wildes; Fassed
Assistant Surgeon E. M. Shipp, from Port Isabella
to Cavité Station; Assistant Surgeon C. M. Oman,
from Cavité Station to Port Isabella; Ensign J. D.
Walnwright, to the Yorktown.

SUPT. DURYEA RESIGNS.

Dr. Fitzgerald, of Rome May Head Kings County Hospital in His Stead.

Dr. J. T. Duryea, superintendent of the Kings County Hospital, has handed his resignation to Charities Commissioner Folks with a request that it be accepted. Dr. Duryea is to become vice-president of the Colwell Lead Company and is desirous of devoting his entire time to his new job. Commissioner Folks and Deputy Teale have urged Dr. Duryea to stay and as Teale have urged Dr. Duryea to say and as yet his resignation has not been accepted. It is understood that Dr. J. Fitzgerald of Rome, N. Y., will succeed Dr. Duryea. Commissioner Folks says that his name has received consideration.

HER HUSBAND AND CASH GONE. Gave Him \$26,000 to Invest, Mrs. Pow-

ellson Says-Escaped From Asylum. The Sheriff received yesterday an attachment for \$26,000 against Augustus L. Powellson in favor of his wife, Clarita, who alleges that he wrongfully converted money which she had given him to invest for her in stocks. Mrs. Powellson says that her husband escaped on Thursday from a sanitarium in Astoria, where he had been put the day before.

HAS A RIGHT TO DEFENCE

WHICH EVEN CONTEMPT OF COURT CAN'T TAKE AWAY.

Important Legal Point Decided in a New Way in the Sibley Divorce Case-Sibley Didn't Pay His Allmony and His Side Wasn't Heard at the Trial.

The Appellate Division of the Supreme Court yesterday in the case of Sibley vs. Sibley handed down a decision which denies the right of a trial court to punish a party in contempt by refusing to allow

him to put in his defence. According to L. Laffin Kellogg of the law firm of Keilogg & Rose, who appeared for Richard C. Sibley, the appellant, the decision is the first of its sort ever made in this State and will overturn a custom of trial judges.

Quite apart from the legal importance of the decision, which Mr. Kellogg says has been eagerly awaited by members of his profession, the decision is of importance to Richard C. Sibley, who was formerly prominent in the affairs of two Massachusetts distilling companies and who, according to his wife, had an income of \$25,000 a year. Sibley said he didn't get so much, and at the time the trouble began alleged that he was unable to pay \$350 a month alimony.

Mrs. Sibley, who was Miss Carlie Weil, began an action for separation from her husband two years ago. They had been married sixteen years then. She is about twenty-five years younger than Sibley, who is said to be 56 years old. She alleged cruel treatment on his part, said he had struck her repeatedly at their home and in hotels, had refused to let her read Gibbon's "Decline and Fall of the Roman Empire." and practised gymnastics in scanty attire at the rear window out of pride of his own

Sibley brought a suit for divorce against his wife and an action for alienation of his wife's affections against George Stuart Smith. His suit against his wife was held up by an order in the original suit, compelling him to pay her \$350 a month alimony and the action against Smith has not come to trial.

Sibley didn't pay the alimony and was adjudged in contempt. He appealed and the Appellate Division decided that he could appear by counsel in the suit, but could merely cross-examine. He was not allowed to put in any evidence or any an-

swer. Mrs. Sibley won on the trial of the case. and Sibley won on the trial of the case, and Sibley appealed again. The decision on this appeal was handed down yesterday. It was written by Justice Laughlin and was concurred in by the four other Jus-tices. In part it follows:

was concurred in by the four other Justices. In part it follows:

It is doubtful whether the evidence is sufficient to sustain the judgment. The parties were married on the 11th day of February, 1886, and lived together until the 1st day of November, 1885; but, a coording to the plaintiff's testimony, they ceased to cohabit after the spring of 1895. The only evidence concerning the conduct of the defendant toward the plaintiff subsequent to the 19th day of February, 1896, is the uncorroborated testimony of the plaintiff hereself. Her testimony with reference to the period prior to that time shows different acts of cruelty and violence of an aggravated character on the part of the defendant toward her; and as to many of the incidents, but not as to any assault, she was corroborated by a nurse who was employed by them during the months of September and October, 1888, and by her ladies' maid who was in her employ from March, 1994, until Feb. 19, 1896.

It appears, however, that she never left the defendant on any of these occasions, that she soon forgave his conduct and, in the main, they lived happily together, Great affection was manifested by each for the other in their correspondence throughout their married life. In brief, if it be possible to waive and condone offences of cruel and inhuman conduct without actual cohabitation, the evidence would seem to require that inference in this case.

It is, however, unnecessary to decide this question at this time, for a new trial must be ordered on another ground, and additional evidence may be introduced of such a character as to materially change the aspect of the

question at this time, for a new trial must be ordered on another ground, and additional evidence may be introduced of such a character as to materially change the aspect of the case in this regard.

The judgment deprives the appellant of property and contract property rights, and his exceptions fairly present the question as to whether his property has been taken without due process of law within the meaning of the Fourteenth Amendment to the Federal Constitution. The defendant did not institute the action and he did not ask that it be tried. The plaintiff forced it to trial against his will and a judgment resulted which deprived him of property without his having been heard in defence of his rights. This the Supreme Court of the United States has quite recently unanimously decided may not be done (Hovey vs. Elliott, 187 U. S., 409). Prior to that decision it had been declared by numerous adjudications in this jurisdiction that in an equity suit the answer of a defendant who has been adjudged guilty of contempt in failing to obey the mandate of the Court might be stricken out (Walker vs. Walker, 82 N. Y., 262, &c.).

In the exhaustive opinion delivered by Mr. Justice White in Hovey vs. Elliott, the decision of our Court of Appeals in Walker vs. Walker is considered, and, in effect, overruled. The doctrine of the cases in our court to which reference has been made is not reconcilable with the decision of the Supreme Court in Hovey vs. Elliott. There is no room for distinction, and, it being a Federal question, it is our duty to follow the Supreme Court.

The judgment must therefore be reversed and a new trial granted, but without costs.

Lee Back in Asylum.

TRENTON, N. J., Nov. 21.-William J. Lee. formerly owner of the Phænix Iron Com-

Weeding Out Post Office Sites.

Postmaster Van Cott, Collector Stranahan and United States District Attorney Burnett discussed sites for the new uptown Post Office for about an hour yesterday. | years ago. ____ Afterward, the Postmaster said they had done nothing beyond rejecting some of the sites which were manifestly unsuitable. Which were thrown out he would not say.

J. Romaine Brown & Co. wrote to The Sun yesterday that the block bounded by Thirty-third and Thirty-fourth streets and Eighth and Ninth avenues could not have been offered as a site because they control the Eighth avenue frontage to a depth of a hundred feet.

SINK N. Y. CENTRAL TRACKS. Mayor and Comptroller Want to Know Why It Can't Be Done.

Park avenue property owners turned out in large numbers yesterday to oppose the New York Central Railroad's plan for the widening of Park avenue between Fortyfourth and Fifty-sixth streets and the closing of the intervening streets. A public hearing was given on the matter by the Board of Estimate.

It was contended by the property owners that there was no adequate reason for the closing of the thoroughfares. They urged that by depressing the tracks of the railroad interference with the surface of the streets would be unnecessary. The Mayor and other members of the Board of Estimate were inclined to favor this solution of the Park avenue problem, and the hearing was adjourned until next Wednesday to enable the representatives of the railroad to consider the practicability of the suggestion John Larkin, representing the Midd John Larkin, representing the another Park Avenue Property Owners' Association, said that by depressing the level of the tracks four feet it would be possible to construct a tunnel for new tracks under the surface.

Park avenue without disturbing the surface Ira A. Place, counsel for the railroad, replied that such an undertaking was not plied that such an undertaking was not possible because a depression of at least twenty feet would be required, which would create a grade that would make it impossible for trains to run into the station unless the yard itself were depressed.

"Well, why not do that?" Comptroller Grout interjected. "The Pennsylvania is going to lay its tracks below the level of the street. Why can't you?"

"Yes, why can't it be done?" added the Mayor.

In the subsequent discussion it was insisted that the railroad company could follow out this plan if it chose to spend enough money.

Everett P. Wheeler, who appeared for individual property owners, favored the railroad's plan and Ashbel P. Fitch op-

ATTACK ON WESTERN UNION. & loston Councilman Says It Is Unfair to Organized Labor.

BOSTON, Mass., Nov. 21 .- At last night's meeting of the Boston Common Council an order was introduced by Mr. McDonald of Ward 3, requesting the Mayor "to in-struct the heads of the several city departments to give no messenger or tele-graph business to the Western Union Telegraph Company or the Mutual District Messenger Company, as said companies are unfair to organized labor." The order was referred to the Mayor

member of the Citizens' Union. When asked for the reason of Mr. Carey's dis-missal Mayor's Secretary Reynolds said:

One proposition now heard for the reorganization and strengthening of the Republican County Committee involves the

rescinding of the second paragraph of Article 13 of the party rules. That section gives the Assembly District Committee the power to run its politics much as it pleases. It is argued that a change, giving greater control over district leaders and machinery to the County Committee, would operate

Jersey Republican Congressmen to Act Together on Speakership.

TRENTON, N. J., Nov. 21.-Five of the Republican Congressmen-elect - Messrs. Loudenslager, Gardner, Lanning, Packer and Wylie held a conference at the State House to-day to discuss the contest for Speaker. In the absence of Congressman Howell and Fowler it was decided to do nothing until another conference can be called. The idea is for the Jersey delegation to act as a unit. Heretofore the delegation has split, and has failed to be a factor in speakership contests. in speakership contests.

Murphy Home on Monday.

Leader Murphy of Tammany Hall is at Mt. Clemens. The new Executive Com- Caputa. William J. Rogers, who is said tion on Dec. 28. The committees for the ensuing year will be named by Mr. Murphy.

As now constituted, the important committees are led by friends of Richard Croker, who received their appointments thereof the planet the instance, and another clerk, Nicholi Luskin, were arrested. In the Jefferson Market court Magstrate Flammer held Rogers without bail and the who received their appointments thereon through him. Tammany is waiting to see what changes Mr. Murphy will make.

Addicks Won't Get Kenney's Help.

DOVER, Del., Nov. 21.-Rumors that J. Edward Addicks might get into the United Hospital for the Insane, returned here from New York this afternoon. He was met at the station by a detective and returned to the hospital.

At the hospital to-night he presented a certificate signed by a Dr. Clark of New York, certifying that he was mentally and physically sound. This, he told the physicians, he had obtained without divulging the information that he had escaped from a lunatic asylum. He is regarded as insane only on certain subjects.

States Senate through a deal with former Senator Richard R. Kenney, Democratic votes to elect them both were set at rest to-night. Senator Kenney denied the story in the most positive way. He said he had fought Addicks for twelve years and should keep up the fight.

Mrs. Alfred Roosevelt's Marriage.

Boston, Nov. 21.—Mrs. Alfred Roosevelt of Beacon street, whose engagement in

to the Rev. T. J. Bowlker of Hertfordshire England, was announced a few weeks ago, will be married next Monday. She is the daughter of the late Augustus Lowell and married Mr. Roosevelt, a second cousin of President Roosevelt. Mr. Roosevelt was killed in an accident at Rye about ten

done nothing beyond rejecting some of the | The Big Four Will Not Increase Wages. CINCINNATI, Ohio, Nov. 21.- President M. E. Ingalls of the Big Four system returned from New York to-day and at once entered a denial to the report that had become current that the road over which he

SAYS HE WAS KIDNAPPED.

ARTIST ALLEN SEEKS RELEASE FROM A SANITARIUM.

Appeals to Clarence Lexow to Help Him to Freedom-Says He Has \$20,000 in New York and Can Pay His Debts -Physicians Say That He Is Insane.

When the commissioners appointed by upreme Court Justice Keogh met at the office of ex-Corporation Counsel Michael J. Tierney at New Rochelle yesterday to in quire into the alleged incompetency of William S. Allen, a former society man and artist, who had a country residence at Rye, Mr. Allen made the assertion that he was kidnapped and imprisoned in a sanitarium, and that he is prevented from communicating with his counsel.

Mr. Allen comes from a wealthy New York family and he says that he is a cousin of Mrs. Jack Wilmerding. The proceedings to declare him insane and incompetent were brought by his uncle, E. H. Sutton, rich resident of Bloomfield, N. J. He has a sister, Mrs. James H. Ward, who is travelling in Japan. Mr. Sutton is repre sented by Samuel C. Herman of Manhattan Mr. Allen asked that he be represented by counsel, and the commissioners, who are Mr. Tierney and Arthur Ludlow Clark, adjourned the case until Dec. 3 to give him

has been intimately acquainted for twenty-Mr. Sutton testified that his nephew was suffering from hallucinations and that he believes he is pursued by creditors who are trying to get possession of his

an opportunity to confer with his counsel

Clarence Lexow, with whom he says he

Dr. Ruland, proprietor of a sanitarium at Westport, Conn., testified that Allen had been an inmate there for about six years and that he was suffering from paranoia. Dr. Samuel Beyea of New Rochelle, who examined Allen only a few hours before the meeting, agreed with Dr. Ruland.

Allen was brought in and allowed to testify. He said that he and his sister were orphans, that they had inherited a fortune and were brought up in luxury. The witness said he was educated in art in London and Paris and studied in several universities in Germany. After his return from Europe he established a studio in New York, where he did illustrating for magazines. He said he made \$18,000 in illustrating one book and that he was also The order was referred to the Mayor without debate.

MAYOR BOUNCES H. O. CAREY.

Citizens' Union Man Who Was Deputy
License Chief—Won't Tell Why.

Mayor Low has appointed James D.
Merriman deputy chief of the Bureau of Licenses of Manhattan and The Bronx.
The appointment says, "to succeed Henry O. Carey, dismissed."

Mr. Carey was appointed by the Mayor Mr. Carey was appointed by the Mayor Allen said that he was also illustrating one book and he attended in the license illustrating one book and he attended in the license illustrating one book and he attended in the license illustrating one book and he attended in the lower illustrating one book and he magez illu

Alen said that he was kinnapped from the home of his sister in Rye by two New York doctors, who took him to Connecticut and placed him in the sanitarium. At first, he says, he was allowed the privi-lege of the library, but for the last nine missal Mayor's Secretary Reynolds said:

"The cause will not be made public; as it is not so flagrant as to make publicity necessary."

WOULD TIGHTEN UP THE COGS.

"I have a \$6,000 library at Rye," said the witness, "and there are enough pictures locked up in my sister's storehouse to pay all my debts. I have written to my sister, who is travelling in Japan, but have received no answer. The only explanation ceived no answer. The only explanation I can make of these proceedings is that my relatives have no regard for me." Allen says that Lawyer Herman is his

brother-in-law. He made no direct charge against anyone connected with the proceedings.
The relatives deny that Allen was prevented from communicating with his lawyers. They say that if he regains his liberty he is sure to make trouble for himself and them, and that it is not safe for him to have possession of his estate, because he will throw his money away.

After the close of the hearing to-day Commissioner Tierney took Allen into his private office, where he dictated a letter to Clarence Lexow. Mr. Tierney was so much impressed with Allen's story and with his refined manner that he also wrote a letter to Mr. Lexow, in which he said he would held the case capable give Allen an he will throw his money away.

would hold the case open to give Allen an opportunity to present all the testimony that he could obtain in his own behalf.

TWO DEAD-DRUG CLERK BLAMED Grandmother and Child Killed by Cyanide of Potassium, Doctor Says.

A drug clerk's mistake is thought to have rused the death from cyanide of potassium poisoning yesterday of Virginia Curraculo expected home on Monday from his vacation, and her six-months-old grandchild, Joseph mittee of Tammary will meet for organiza- to have prepared the medicine, his emothers in \$2,000 each until an autopsy can be made.

> The Caputas with their five children, and the grandmother and her ninety-yearold husband live at 408 West Sixteenth street. The baby and the grandmother were ill yesterday and the daughter Jennie, 16 years old, was sent to Rennenberg's store at 103 Ninth avenue, for some castor oil and almond oil. She brought back a mixture in a bottle, but Mrs. Curraculo, after smelling it, declared that it was not right. Jennie and a sister a year of two older, went back with it, but returned with the same bottle. The clerk, they said, had declared that everything was all right.
>
> The grandmother then took a large dose and gave the baby a smaller one. A few minutes later the old woman fell to the floor in convulsions and died in a few minutes. The baby was also taken ill and the parents sent for Dr. O'Shea. He declared that they had been poisoned by cyanide of potassium and sent to the New York Hospital for an ambulance. The child died within a half hour after reaching the hospital. street. The baby and the grandmother

when the police were notified they took the two girls to the drug store where both pointed to Rogers as the one who sold them the medicine. Rogers was then arrested together with his employer and Luskin. Rogers denied having waited on the children. the children

the children.

The grandfather has not yet been told of his wife's death. He is blind and very weak and his children fear that the shock of her death will kill him. All day yesterday, he sat by her body, believing that she was very ill and too feeble to speak.

Waltham Watches.

"Old friends are best."

"The Perfected American Watch," an illustrated book of interesting information about watches, will be sent free upon request.

> American Waltham Watch Company, Waltham, Mass.

THE 19 POLICE CAPTAINS WIN. Supreme Court Sustains Their Demurre

to Ouster. The decision of Supreme Court Justice D Cady Herrick in overruling the demurrer to the complaint in the taxpayer's suit to oust the nineteen police captains appointed by the York-Sexton board in December, 1900, and February, 1901, was unanimously reversed by the Appellate division of the Supreme Court in Brooklyn yesterday Eight of these captains are now on duty in Brooklyn and the rest are assigned to precincts in Manhattan.

J. Warren Greene, representing the Civil Service Reform Association, began a taxpayer's suit to oust the captains on the ground that certificates made by the Police Commissioners to the Municipal Civil Service Commission were based upon fraud and favoritism and political bias, and that the appointments should be declared null and void, and that the appointees should be reduced to the rank of sergeant. Edward M. Shepard appeared for Mr. Green and former Corporation Counsel William C. DeWitt represented the nineteen police

captains.

Mr. De Witt demurred to the complaint on the ground that it did not constitute a cause of action and insisted that there cause of action and insisted that there was no present or resultant waste or injury of funds or estate of the city and pecuniary detriment to the plaintiff. He held that the

appoint ments were regular and valid.

Justice Hurick overruled the demurrer and granted an interlocutory judgment in favor of the plaintiff. The case was then carried to the Appellate division. The opinion, in which all concur, was written by Justice Woodward. The decision says:

"The defendants are helding specificants to "The defendants are holding positions t which they have been appointed under th forms of law. They are holding office under color of right, and the question of the title to the office is the one which is, in fact. involved. The appropriate remedy, and an adequate one, is by information in the

nature of a quo warranto."

Since the beginning of the suit nine months ago the nineteen captains have not drawn salaries. The Police Commis-sioner and the Civil Service Commission would not certify to their payrolls as cap-tains and the captains would not accent tains and the captains would not accept the salaries of sergeants. The captains will now apply to the Supreme Court for will now apply to the Supreme Court for an order commanding the Police Commis-sioner and the Civil Service Commissioners to certify to their payrolls as captains. Police Commissioner Partridge refused yesterday to discuss the decision of the Appellate division until he had received official notice of it.

UPHOLDS STUDENT'S EXPULSION. Court Now Decides That N. Y. University

Rightly Dismissed Young Goldstein. The Appellate Division has reversed the decision of Justice Marean of Brooklyn in O Didn't he? A. It was hardly a blow; granting Louis Goldstein a temporary in- he lust pushed me. junction, restraining the faculty of the New York University from preventing him from

York University from preventing him from completing his course as a student in the University law school.

Goldstein was expelled several months ago on charges of improper conduct. A girl student had received a letter signed "Louis Goldstein," in which the writer begged the pleasure of her acquaintance. Goldstein was arraigned before the dean of the faculty, and he not only denied writing the letter, but charged another student with doing so. The letter was typewritten, and in it the word "uncourteous" occurred. It was spelled "uncurteous," and when Goldstein and his class were tested with a dictation he was the only one to spell the word wrong. The faculty then decided he was the author of the letter and expelled him, not for writing it, but for having untruthfully accused another as the writer.

In denying the injunction ordered by lastice Mercen, the Appellate Court was specified. him, not for writing it, but for having untruthfully accused another as the writer.

In denying the injunction ordered by Justice Marean, the Appellate Court says that the relation between a student and the university is contractual, subject to the punishment of expulsion should he violate the university's rules and regulations, but in Goldstein's case:

It scarcely needs argument to all the case and the jury soon came in with an acquittal.

In another case, according to the evidence, a policy man who was being trailed by the Goddard detectives, passed a policy slip to a man named Brown and before Brown bad a chance to open his hand and see what he had the Goddard men arrested him. Judge Foster directed the jury to acquit. In doing so he said:

I am fully aware that certain private eties are interested in a contraction of the purpose.

tions, but in Goldstein's case:

It scarcely needs argument to show that such a person would be unfit to remain a member of the law school, and that expulsion on such a state of facts would be justified. The offeness were committed in the presence of the faculty. One of them arose out of the plaintiff's charge, made and examined against a fellow student, and he was tunished for making that false charge, which of itself would justify the expulsion.

There was a full investigation, at least of the charge which he himself made before the faculty against his fellow student, and that charge having been fully investigated in his presence and found to be false sufficient ground existed for his expulsion.

PARENTS BIT AND CUT SON. Tied Him in the Cellar Because He Could Not Find Work.

Leonardo Rizzolo, 13 years old, was found vesterday morning tied to a brick pier in a coal bin in the cellar of the tenement occupied by his parents at 34 Garside street, Newark. The boy's cries attracted the attention of neighbors, who could not get into the bin and they called the police. The boy's hands were tied. He was fain with fright and pain and had chafed his wrists severely in trying to break his

bonds. He was released and his step-

mother was arrested. The lad was emaciated and bore evidences of extreme brutality. There were marks of teeth upon his arm, where he said his stepmother had beaten him, and a cut on his right arm, which, he said, was made by his father. He told the police that this punishment was inflicted because he failed to find employment.

Hecht-Happ.

Miss Natalie Happ, daughter of Mr and Mrs. H. Happ of Montezuma, Ga, was married to Charles H. C. Hecht, on Thursday at the home of her sister, in this city. Mr. Hecht is superintendent of Branch P. New York Post Office.

BEHAVE OR GO, SAID JEROME.

ANTI-POLICY COUNSEL MIGHTY NEAR BEING PUT OUT OF COURT.

Stormy Day for the Goddard Society Folks -Counsel Punches Superintendent and

a Prisoner Wins Acquittal for It-

Gen. Tracy on Somebody's Trail, Too. Charles P. Blaney, the lawyer for the Goddard Anti-Policy League, ran afoul of District Attorney Jerome yesterday in Judge Foster's Court of General Sessions while Mr. Jerome was addressing the Court in regard to the punishment that should be given to a man who had just pleaded guilty to playing policy. Mr. Jerome suggested to Judge Foster that as the alleged keeper of the policy shop was acquitted last Thursday, the player should not be deprived of his citizenship by being sentenced to jail. Mr. Blaney, who was sitting within the rail,

sneered. "You may sneer, Mr. Blaney," said Mr. Jerome, "but if you do not conduct yourself in a gentlemanly manner I shall ask the Court to exclude you."

Judge Foster nodded to Capt. Wheelook of the court squad, who walked over to Mr Blaney and waited for further instructions from the Judge. Mr. Blaney changed color but Judge Foster did not take further steps and Wheelock sat down. Judge Foster suspended sentence upon the man who had pleaded guilty.

Blaney also ran afoul of Supt. McFarland of the Goddard society while pleas were being taken. On behalf of Henry Carleton of 57 Centre street. Lawyer Jimmy Oliver had pleaded guilty to violating the Anti-Policy law in his shop, which is within a stone's throw of the Criminal Courts Building. District Attorney Jerome remarked that if certain indicted men were merely players he wouldn't want them sent to jail Supt. McFarland said that they were not policy writers but players. Mr. Blaney's fist landed on McFarland's neck.

"Ha!" yelled Oliver so loudly that the Court jumped, "I now wish to change my client's plea, your Honor, and go to trial.' "Very well," replied Judge Foster, and the case was presented to the jury. Oliver

then examined McFarland.
"The man who pays you is in court, ian't he?" asked Oliver. McFarland affirmed this and identified Blaney.

Q. And when you were telling Mr. Jerome that some of these men were players he hit you in the neck, didn't he, and you comcluded that they were writers? A. Well, I wouldn't

"Do you mean to say that an assault was committed in open court?" asked Judge

I am fully aware that certain private societies are interested in prosecuting these cases and for the purpose of attracting notoriety go to the newspapers and criticize the courts, the District Attorney and the Judges who venture to dispose of the cases in a manner not satisfactory to them. But this is my plain duty and it is a course that meets my views and doubtless your views also.

G. Benjamin F. Tracy was in court vestoralay to demur to the indictment of John Collard, who was arrested at 23 Warren street last summer by the Goddard agents. Magistrate Crane threw the case ren street last summer by the Goddard agents. Magistrate Crane threw the case out of the police court, saying that it was a "plant," and that Mr. Blaney had no right to open a scaled and stamped envelope he had found in Collard's pocket.

Blaney took the case later to Assistant District Attorney Perkins, who is in charge of the indictment bureau and had Collard indicted. Argument on Gen. Tracy's demurrer will be made next Tucsday. Gen. Tracey intimated that he intended to make some persons smart.

Bail was discharged yesterday before Judge McMahon in the cases of nine men included in the so-called Al Adams cases, but still holds in the cases of Adams, Devery's brother-in-law, Mike Bergen, Adolph Jantzen and Thomas Coughlin.

MURRAY TO BE TRIED AFTER ALL.

His Pica That He Was Not Required to Inspect Subway Explosives Doesn't Go. The Appellate Division handed down an opinion yesterday reversing the decision of Justice Lyon in allowing the demurrer of George E. Murray, former Inspector of Combustibles, to his indictment. By this decision Murray must stand trial for neglect of duty in permitting Ira Shaler, the subway contractor, to store in Park avenue explosives in excess of the amount allowed by law. The court holds that Murray needed no specific order to enter and examine the storage places where he "well knew" the law was being violated, or where he wished to ascertain if any violations existed.

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